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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/552,115 | 10/04/2005 | Hiroki Hibino | 19206 | 4085 |
| 45307 | 7590 | 04/01/2009 | EXAMINER | |
| SCULLY, SCOTT, MURPHY & PRESSER, P.C. | | | BEISNER, WILLIAM H | |
| 400 GARDEN CITY PLAZA | | | | |
| SUITE 300 | | | ART UNIT | PAPER NUMBER |
| GARDEN CITY, NY 11530 | | | 1797 | |
| | | | | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 04/01/2009 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/552,115 | HIBINO ET AL. | |
| | Examiner | Art Unit | |
| | WILLIAM H. BEISNER | 1797 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 October 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 04 October 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/4/2005</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement filed 10/4/2005 has been considered and made of record.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-8, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyake et al.(US 4,812,392) in view of Wang et al.(US 5,488,811).

With respect to claims 1 and 2, the reference of Miyake et al. discloses a treatment section (3, A) for applying a predetermined treatment to cells stored in an openable container (7) for an automatic culture apparatus in a partitioned space (See column 3, lines 48-51) and a control section (E) for controlling the treatment section.

Claims 1 and 2 differ by reciting that the device includes a detection section for detecting a predetermine state of the space and located in the space or in the vicinity of the space and by reciting that the control section prevents the container from being opened or closes the container if the predetermined state is detected.

The reference of Miyake et al. discloses that the treatment section is provided in a partitioned space that includes a flow of sterilized air (See column 3, lines 48-51).

The reference of Wang et al. discloses that it is known in the art to monitor an enclosure that includes a flow of sterilized air for contamination. The reference discloses the use of detection section (70) and control section (40) for detecting a predetermined state of contamination (See column 4, lines 9-42).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the primary reference with a contamination detection system as taught by the reference of Wang et al. for the known and expected result of monitoring the enclosure for contamination. With respect to prevention of opening the container and/or closing the container when contamination is detected, one of ordinary skill in the art would have clearly recognized that stoppage of the process as suggested by the reference of Wang et al. (See column 4, lines 33-38) would include closing or preventing opening of the container for the known and expected result of protecting the contents of the containers from the detected contamination.

With respect to claim 3, the detection sensor is a cleanliness sensor (See column 4, lines 9-42).

With respect to claims 4 and 8, the reference of Wang et al. discloses a report section associated with the detection sensor (See column 4, lines 28-38).

With respect to claims 5-7, in the absence of a showing of unexpected results, one of ordinary skill in the art would have been capable of determining the optimum position of the detection section within the system while providing the required monitoring of contamination within the enclosure.

With respect to claim 12, the container (7) is capable of being used for cell culture.

With respect to claim 13, the reference of Miyake et al. includes an incubation chamber (C) and transfer mechanism (B).

7. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyake et al.(US 4,812,392) in view of Wang et al.(US 5,488,811) taken further in view of DiMassimo et al.(US 4,342,922).

The combination of the references of Miyake et al. and Wang et al. have been discussed above.

Claim 9 differs by reciting that the system further includes an auxiliary power supply, a power-failure detector and a controller for switching to auxiliary power.

The reference of DiMassimo et al. discloses that it is conventional in the art to provide a system powered by AC power with an auxiliary power supply (B1). The references discloses the use of a detection section (18,22) and control section (11-13) for switching to auxiliary power (B1) in the event of a detected power failure.

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the modified primary reference with an auxiliary power system as suggested by the reference of DiMassimo et al. for the known and expected result of providing power to the culture system in the event of a power failure.

With respect to claim 11, if the system of the modified primary reference of Miyake et al. does not inherently include a detector for determining the open/close state of the container, it would have been obvious to one of ordinary skill in the art to provide the sensor for detecting the position of the lid as is conventional in the art of automated processing systems.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyake et al.(US 4,812,392) in view of Wang et al.(US 5,488,811) and DiMassimo et al.(US 4,342,922)taken further in view of Zlobinsky et al.(US 5,252,485).

The combination of the references of Miyake et al.. Wang et al. and DiMassimo et al. have been discussed above.

Claim 10 differs by reciting that when in power-failure, the system allows the container to be closed prior to shutting down the system.

The reference of Zlobinsky et al. discloses that it is known in an automated processor device to provide auxiliary power when a power failure is detected so as to allow a processing cycle to finish (See column 12, liens 1-10).

In view of this teaching, in the event of a power failure, it would have been obvious to one of ordinary skill in the art to allow the container lids to be closed prior to termination of the culture process for the known and expected result of preventing specimen loss and/or contamination during a main power failure.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/
Primary Examiner
Art Unit 1797**

WHB